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PROVINCE OF TARANAKI.

FENCING ORDINANCE, 1875.

IN THE THIRTY-EIGHTH YEAR OF THE REIGN OF HER MAJESTY QUEEN
VICTORIA.

SESSION XXIV., No. 2.

AN ORDINANCE TO AMEND THE LAWS RELATIVE TO FENCES.

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AN ORDINANCE TO AMEND THE LAWS RELATIVE TO FENCES. Title.

WHEREAS it is expedient to amend the laws now in force in Preamble.
the Province of Taranaki relative to the fencing of land :

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BE it therefore enacted by the Superintendent of the Province of Taranaki with the advice and consent of the Provincial Council thereof as follows :—

Short Title. 1. This Ordinance may be cited and referred to as the "Fencing Ordinance 1875."

Repeal. 2. The "Fencing Ordinance 1858" shall be and is hereby repealed.

Save action taken under Repealed Ordinance. 3. Where before the coming into operation of this Ordinance any notices have been given or any liability incurred under the Ordinance mentioned in the said Schedule or any matter or thing done before the coming into operation of this Ordinance has accrued or any action suit or other proceeding in respect of such matter or thing has been commenced every such notice matter or thing shall be of the same force and effect and every such liability shall continue and every such action suit or other proceeding shall be prosecuted continued and defended as if such Ordinance was not repealed.

Sufficient fence defined in Schedule A. 4. In the construction of this Ordinance the term "sufficient fence" or "substantial fence" shall be taken to include all fences of the description in Schedule A hereunto annexed : Provided always that no person shall be entitled to erect any such fence as is described in Clauses Nos. 1 and 2 and 13 of Schedule A within the limits of a town : And provided also that where a sufficient fence has already been erected under the provisions of the Ordinance hereby repealed it shall not be necessary that any such fence should until its re-erection be made a sufficient fence within the meaning of this Ordinance.

Notice to be given to fence. 5. Before any person shall erect or make a sufficient fence dividing his land from land adjoining thereto such person is hereby required to give to the occupier or if there be no occupier to the owner of such adjoining land or if the owner be absent from the Province or Colony then by delivering the same to or leaving the same at the residence or place of business of his known agent resident in the Province a notice in writing in the form or to the effect of that contained in Schedule B hereunto annexed of such person's intention to erect or make such sufficient fence : And if such person shall erect the fence without giving notice as aforesaid the occupier or owner as the case may be of such adjoining land shall not be liable to pay any portion of the value of such

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Purchaser of Crown Lands to pay half cost of fence.

fence : Provided also that in the event of any adjoining lands being Crown lands at the time of the erection of any fence within the meaning of this Ordinance the purchaser occupier or Crown lessee of such adjoining lands shall not later than six calendar months after the time of his becoming the purchaser occupier or lessee upon notice being given as aforesaid pay to the owner occupier or Crown lessee who has erected the fence one-half of the then value of such fence.

If occupier or owner absent from Province notices to be published.

6. Every such notice may be served upon such occupier or owner either personally or by leaving the same with some adult inmate at his usual residence or if such owner shall be absent from the Province then by delivering the same or by leaving the same at the residence of his known agent in the same manner and if there shall be no such agent resident in the Province then it shall be sufficient to insert such notice at least three consecutive times in a newspaper having circulation in the district : Provided always that the burden of proving the due service or publication of every such notice shall rest with the giver of the notice.

If giver and Receiver do not agree as to nature of fence arbitrators to decide.

7. If within two months when the land to be fenced is open land and within six months when the land is covered with standing bush after the service of such notice or publication thereof as herein before provided the giver and receiver thereof do not enter into an agreement as to the nature of the fence to be made the person giving such notice may refer the dispute as to the nature of the fence to be made to arbitration and the arbitrator arbitrators or referee as the case may be shall determine the nature of the fence to be made and if within seven days after the decision is made known the giver and receiver do not enter into an agreement as to the cost thereof and the mode and time of making the same the person giving such notice may proceed to erect a sufficient fence within the meaning of this Ordinance as decided by the arbitrator arbitrators or referee and the owner or occupier of such adjoining land to whom such notice shall have been given shall be liable for and shall pay to such person or any other in his right within three months after a demand made upon him personally or at his dwelling-place if within the Province or upon or at the residence of his known agent if absent from the Province or by intimation in a newspaper having a circulation in the district unless he earlier avails himself of the fence in which case he shall be liable for and shall pay within one month from the time of so availing himself of it one-half of the original value of such fence as divides the said several properties.

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If either neglect to make fence the other may within six months make fence and recover half cost.

8. If either party shall neglect or fail for the space of one month to perform his part of any such agreement which may be so made the other party may thereupon or at any time within six months thereafter make a fence of the kind or description so agreed upon or may at his discretion make any other sufficient fence within the meaning of this Ordinance and may immediately thereupon or at any time thereafter recover from the defaulting party one-half of the actual cost of making such fence.

Reference of nature of fence to arbitration be made in writing,

9. The reference to arbitration of a dispute as to the nature of fence to be made shall be by a notice in writing and if within fourteen days after the notice is delivered the receiver has not appointed an arbitrator the arbitrator who acts on behalf of the giver of the notice shall decide on the nature of the fence to be made.

Arbitrators to appoint referee,

10. Before the arbitrators proceed to act they shall appoint a referee and if the arbitrators cannot come to a decision in the matter in dispute it shall be referred to the referee who shall decide. Provided that the arbitrator arbitrators or referee make a decision within seven days from the day they are respectively authorised to act.

All decisions to be in writing and binding.

11. All decisions made by an arbitrator or by arbitrators or by a referee shall be in writing and such decisions shall be final and binding on both parties.

Cost of arbitrators to be recovered as proportioned by arbitrators.

12. The cost and expenses if any attending any award or decision made or given under the provisions of this Ordinance shall be recoverable by summary proceedings from either or both parties and in such proportions as the arbitrator arbitrators or referee shall therein decide.

Occupier may recover from owners half cost of fence in certain cases.

13. Any occupier shall be entitled at the expiration of the time for which he shall hold the land fenced under this Ordinance to recover from the owner thereof the half of the then value of any fence made under this Ordinance: Provided that where the occupancy is for a term of which less than two years shall be unexpired at the time of the making of the fence it shall not be lawful for the occupier of any land to recover from the owner thereof the value of any such fence unless he shall previously to the making thereof have received notice from an adjoining occupier to make such fence or unless he shall have obtained the consent in writing of the owner of such land to

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the making thereof: Provided always that nothing herein contained shall make void or affect any covenant or agreement relative to fencing which shall be now subsisting or shall be hereafter entered into between adjoining occupiers or owners or between landlord and tenant under any lease or by implication of law or otherwise.

14. The owner or occupier of any land in the Province of Taranaki not being within the limits of any town may in making a fence of the description No. 1 Schedule A dividing his land from the land thereto adjoining make a ditch on such adjoining land and use the soil taken therefrom towards the making of a bank and he may also place the half of the bank on such adjoining land: Provided always that it shall not be lawful to make any ditch or bank upon any such adjoining land in any case where a hedge of live thorns gorse or other suitable hedge plant may have been planted and kept in good thriving condition thereon so as to disturb or injure such hedge without the consent of the owner or occupier of such land first obtained: And where a dividing fence is made of the description No. 2 of Schedule A the posts of such fence shall be placed on the boundary line.

Owners or occupiers may make a ditch on adjoining land to make dividing fence.

15. When any sufficient dividing fence shall require cutting trimming cleansing or repairs or shall become insufficient the same shall be cut trimmed cleansed and repaired at the joint expense of the owner and occupier of the adjoining land and any owner or occupier of land adjoining such fence (having given notice in writing to the other occupier or owner of the land divided by such fence or to his or her agent in the said Province) may on refusal or neglect of such last-mentioned person for the space of one month to agree to contribute one-half of such expense cause the same to be cut trimmed cleansed or repaired and made a sufficient fence and shall thereupon be entitled to recover from such adjoining owner or occupier one-half the cost of so cutting trimming cleansing or repairing such fence.

Repairing or trimming dividing fences.

14. No greater sum shall be recovered under the provisions of this Ordinance in respect of the making of any fence than the sum of twenty shillings per chain in country districts and thirty shillings per chain in the proclaimed towns of the Province of Taranaki for the half cost of any fence.

Limit of cost of fence recoverable.

SCHEDULE A.

1. A bank or dyke not less than four feet high substantially formed with turf on both sides on a base not less than three feet six inches

broad and having a ditch not less than three feet wide and three feet deep on each side of such bank.

WOODS

2. A bank or dyke not less than two feet six inches high substantially formed with turf on both sides on a base not less than three feet broad and a ditch not less than two feet six inches wide and two feet deep on each side of such bank with posts not less than four feet six inches high from the surface of the ground and not more than nine feet apart with not less than two rails or four wires and in the case of a three feet bank three wires.

3. A fence of posts and four rails the posts to be not less than four feet six inches high from the surface of the ground and not more than nine feet apart inserted not less than two feet into the ground the upper rail to be not less than four feet from the ground.

4. A fence of posts and seven wires with posts not more than seven feet apart inserted not less than two feet into the ground the upper wire to be not less than four feet from the ground.

5. Any paling fence four feet three inches high with posts and two rails and having split or sawn timber placed perpendicularly and well nailed to both rails there being not more than three inches of opening betwixt each perpendicular piece of timber.

6. A log fence not less than five feet high from the surface of the ground substantially built of logs or trunks of trees laid horizontally the top log not being less than six inches in diameter and properly secured.

7. A stockade fence not less than five feet high from the surface of the ground made of posts sunk not less than two feet in the ground placed side by side there being not more than three inches of opening between the posts. The posts to contain not less than twelve superficial inches to the foot or equal to twelve inches in sectional area.

8. The posts for all post and rail fences shall contain not less than eighteen superficial inches to the foot or equal to eighteen square inches in sectional area if sawn or split or twenty-four superficial inches to the foot or equal to twenty-four square inches in sectional area if round posts be used.

9. The posts for all post and wire fences shall contain not less than twelve superficial inches to the foot or equal to twelve square inches in sectional area if sawn or split or sixteen superficial inches to the foot or equal to sixteen square inches in sectional area if round posts be used. Straining posts for wire fences shall contain not less than forty superficial inches to the foot or equal to forty square inches in sectional area and shall be inserted into the ground not less than four feet and not more than five chains apart.

10. The rails for all fences where the posts are nine feet apart shall contain not less than eight superficial inches to the foot or equal to eight square inches in sectional area if sawn or split not less than twelve superficial inches to the foot or equal to twelve square inches in sectional area if round rails be used.

